IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 678 of 2002
with
CIVIL REVISION APPLICATIONS NO. 679, 680, 681, 682, 683, 684, 685, 686 & 687 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Versus

SHANKARBHAI DEVJIBHAI SHIYANIA

Appearance:
1. Civil Revision Application No. 678 of 2002
MR MB GANDHI for Petitioner No. 1-2
MRS TRUSHA M GANDHI for Petitioner No. 1-2
M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 03/09/2002

ORAL JUDGEMENT

All these Civil Revision Applications are filed

by the petitioner challenging the order passed by the ld. Extra Assistant Judge, at Surendranagar in Civil Misc. Appeal No. 9 of 2001 and in other cognate matters. The said appeals were filed by the ori. plaintiffs against the order passed by the learned trial judge in Reg. Civil Suit No. 44 of 2000 and other cognate matters.

2. Since common issue is involved in all these civil revision applications, they are being disposed of by this common judgment. The facts stated herein are taken from Civil Revision Application No. 678 of 2002. The case of the petitioner is that at the time of hearing of injunction application exh. 5, along with exh. 1, the ld. Civil Judge (JD) Vadhwan passed an order for return of the plaint on the ground that the pecuniary jurisdiction of the court exceeded and, therefore, the court has no jurisdiction to entertain the suit or to hear the application for injunction.

3. The present respondents in all these matters have challenged the order passed by the trial court in Civil Misc. Appeals before the learned Extra Assistant Judge, Surendranagar.While challenfing the said order, it was contended by the present respondents that the learned trial judge should not have taken into consideration the question of jurisdiction at the time of hearing of interim injunction application. It was further contended that the present petitioner has issued notices cancelling the alltoments, taking back the possession and refunding the amount, and hence, what was challenged was the said notices only and there was no relief claimed either to protect the possession or to claim refund of the amount paid and hence, the learned trial judge has wrongly returned the plaints. The present petitioner has opposed the said appeals and whole-heartedly supported the order of the trial court.

4. The learned Extra Assistant Judge, Surendranagar after having heard the respective parties and after having considered the facts of the case and authorities on the subject, has taken the view that the order passed by the learned trial judge was illegal and that he should not have directed the present respondents to place the suit before the comeptent court. The learned Appellate Judge has appreciated the facts that the present respondents have become the legal possessors of the plots and yet the Vice Chairman and Managing Director of the present petitioner No.1-company cancelled the allotment of plots, vide his order dated 13.9.2000, on the ground

that proper procedure was not followed while allotting the plots. However, the said order was not binding on the present respondents as it was illegal and unjust and hence, the present petitioner was required to be restrained from implimenting the said order.

5. The learned judge has further observed that there are two provisions in the Civil Procedure Code where the plaint can be returned to the plaintiff with a direction to place it before the appropriate court. Firstly, as per the provisions contained in O.7, Rule 10 and 10A of the Civil Procedure Code, where after the appearance of the Defendant, the Court is of the opinion that the plaint should be returned, the court can do so after intimating the plaintiff. Secondly, under the provisions of O. 14, Rule 2, when contention is raised by the Defendant that the court has no jurisdiction to try the suit on account of lack of jurisdiction, the court may frame and determine that issue first postponing the settlement of the other issues. The learned Appellate Judge has further observed that none of these provisions has been followed by the learned trial judge and that there was no occasion for him to pass an order below Exh. 1 as he has already heard an application for interim injunction. The learned Appellate Judge has further observed that the learned trial judge should not have gone into the questionof court fees as the subject matter of the suit decides jurisdiction as well as court fees to be paid and since no such relief was claimed in the plaint which ousted the jurisdiction of the court, the order passed by him is required to be quashed and set aside and the learned Appellate Judge, therefore quashed and set aside the order of the learned trial judge and directed him to proceed further with the suit as per law.

6. It is this order which is under challenge in this revision application. Mr. MB Gandhi learned advocate appearing for the petitioners has submitted that the ld. Extra Assistant Judge has committed a grave error in allowing the appeal and has failed to appreciate and consider the provisions of Order-7 Rule-10 r. w. Rule-10A of CPC. He has further submitted that as per the provisions contained in Order-7 Rule 10, the court will proceed with the suit and is competent to decide at any stage of the suit and to return the plaint as and when it is found that the concerned court has no jurisdiction to hear the said suit. He has further submitted that once the allotment is found to be illegal, the allottee does not get a vested right nor have any claim against the dispossession for the reason that on proper allotment being made, the person concerned whose

application is accepted is bound to get the land and, therefore, when the injunction is obtained not to dispossess, itself indicates that the person is in possession and he wants to protect the possession. He has further submitted that the value of the property as mentioned in the agreement was made the base for claiming the relief in the suit, and, therefore, when the value of such property exceeded Rs. 50,000/, the learned Civil Judge (JD) has no jurisdiction to try the suit. Mr. Gandhi has further submitted that when the parties have addressed the court, the question of any prior notice as contemplated under Order-7 Rule 10A does not arise. Mr. Gandhi has further submitted that the plaintiff's case does not fall within the ambit of sec. 6(4)(j) of the Bombay Court Fees Act, 1959. Since the adequate court fee is not paid and the monetary value of the claim exceeded Rs. 50,000/ the learned trial judge has rightly returned the plaint. In this view of the matter, the appellate court has committed grave error in setting aside the order of the learned trial judge and directed the ld. trial judge to dispose of the suit.

7. Mr. Gandhi, in support of his submissions, has relied upon the decisions of this Court in the case of State of Gujarat vs. Heirs of Ramsinh Laxmansinh and others, 1991(1)GLR 50, State of Gujart vs. Sattarbhai Musabhai Mamoan and Another, 1994(2) GLH 525 and Gujarat Electricity Board & Anr. vs. Patel Manguben Khemabhai (2001)42(2) GLR 1745.

In the State of Gujarat vs. Heirs of Ramsinh Laxmansinh (supra), this Court has held that:

"For the applicability of the provisions of S. 6 (iv)(j) and Art. 23 of the Schedule II to the Act, two conditions are required to be fulfilled - (i) The subject-matter in dispute should not be susceptible to monetary evaluation and (2) the subject-matter in dispute should not have been otherwise provided for in the Act. In the instant case both these conditions are not fulfilled. The subject-matter is capable of being evaluated in monetary terms and it is also otherwise specifically provided. The appropriate Article applicable to the case would be Art. 7 of the Schedule I (Providing for ad valorem court fees). By the injunction prayed for the plaintiff desires to prevent the monetaryloss which may be caused to him on account of the payment of amount of compensation to defendant nos. 1 to 13."

In State of Gujarat vs. Sattarbhai Musabhai Memoan and Anr. (supra), this Court, after considering the provisions contained in Section 6 of the Bombay Court Fees Act, 1957 has held that:

> "The Trial Court has fallen in error in holding that the suit is covered by the aforesaid provision of the Court Fees Act. In the instant case, the subject-matter of the suit is specific performance of contract entered into between respondent No. 1-plaintiff and respondent No.2-defendant. Even if it is not considered to be a suit for specific performance of the contract in relation to movable property, it is evident that the subject-matter of the suit is susceptible to monetary evaluation. Either way, the provisions of Section 6(i)(j) would not be attracted."

In Gujarat Electricity Board & Anr. vs. Patel Manguben Khemabhai (supra) this Court has held that:

> "Considering the averments in the plaint and also considering the pleadings as a whole, it is clear that the plaintiff has tried to put his case under Sec. 6(iv)(j) of the Court Fees Act. However, in substance, he is avoiding the liability of payment of fixed amount and for which he is subjected to bill issued by the G.E.B. The subject-matter, therefore, is fit for the purpose of calculation of monetary loss and monetary evaluation. The subject-matter, therefore, is clearly susceptible of monetary evaluation and would fall under Article 7 of Schedule I of the Bombay Court Fees Act, inasmuch as, this a suit capable of being valued in terms of preventin of monetary loss, and therefore, ad valorem loss sought to be prevented by means of the present suit."

8. On the other hand, learned advocate appearing for the respondents, namely Mr. RV Dagli, Mr.Muktesh Patel and M/s. Thakkar Associates are heard. It is contended by them that the issue involved in the suit is not susceptible to any monetary gain as it was simply a suit

for declaration and injunction. The respondents, in the present revision applications were owners of their respective plots. They are having the possession of the said plot after the allotments were made in their favour and they have paid the price for the said plots. Thereafter, the allottees were issued notices by the petitioner for cancellation of the said allotment on the ground that some illegalities were committed and the said notices were challenged. Thus, there was no monetary gain or loss claimed in the suit and hence,their case would squarely fall within the ambit of sec. 6(4)(j) of the Bombay Court Fees Act. In support of their contentions, they have relied on the decision of this Court in the case of State of Gujarat vs. Patel Parshottambhai Kukabhai, reported in 1994(2) GLR 1125, wherein it is held that the main prayer in the suit was for a declaration that action of the Board was arbitrary and illegal and for consequential relief. Hence, this case would be covered by the provisions of Sec. 6(4)(j) of the Bombay Court Fees Act. It is further held in that case that valuation of suit is required to be based on the averments and allegations made in the plaint and not on the basis of the contentions raised in the written statement. For this purpose, this COurt has referred to the decisions of Hon'ble Supreme COurt in Setthappa Chettiar vs. Ramanathan Chattiar, AIR 1958 S.C. 245 and Ram Narayan Prasad vs. Atul Chandra Mira 1994(2) SCALE 470.

In the above view of the matter, it is submitted that the ld. Extra Assistant Judge has rightly allowed the appeal in their favour and the action of return of the plaint was not held to be justified looking to the facts and circumstances of the case.

9. I have considered the submissions made by the respective parties and I have also perused the authorities relied on by the learned advocates, I am of the view that the issue involved in all these suits is not susceptible to any monetary evaluation as no such relief is calimed in the suit. The suits filed by the present respondents are suits for declaration and injunction. The present respondents were in possession of plots and they were put into such possession after making necessary payments. The said possession was sought to be taken away by issuance of a notice which is, according to them is not valid and hence, the said notice was challenged in the suit. They have not demanded any refund. Hence, there was no monetary evaluation and as such authorities relied upon by Mr. Gandhi are not applicable to the facts of the present case. Even

otherwise, no jurisdictional error was committed by the learned Appellate Judge while passing the impugned order, which calls for any interference by this Court in exercise of its revisional power under Section 115 of the Civil Procedure Code.Hence, all these Civil Revision Applications are rejected. Notice discharged in each of the revision applications with no order as to cost.

(K.A. PUJ, J.)
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